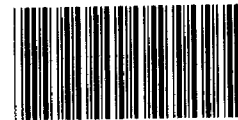


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TESTIMONY OF
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SPECIAL ASSISTANT TO THE COMPTROLLER GENERAL
BEFORE THE
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
ON THE
IMPOUNDMENT CONTROL PROCESS



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Mr. Chairman and Members of the Committee:

I am pleased to appear before you today to explain GAO's role in the impoundment process. Let me start with a bit of background.

Until enactment of the Impoundment Control Act of 1974 there was much disagreement between the executive branch and the legislative branch as to which has ultimate control over government program and fiscal spending policy. The executive branch, largely on grounds of fiscal responsibility, had sought to curtail or eliminate numerous programs funded by the Congress. The courts held, for the most part, that such Executive attempts to avoid implementation of government programs through the withholding of budget authority constituted illegal impoundments. Nevertheless, and despite a reasonably clear understanding of the limits of Executive authority, the power to impound budget authority was easy to exercise and challenges to that power difficult and time consuming to resolve.

The Impoundment Control Act was designed to tighten congressional control over impoundments by establishing a detailed procedure under which the legislative branch could consider the merits of impoundments proposed by the executive branch. The act fundamentally calls for the executive branch to report and explain to the Congress all proposed impoundments with ultimate authority to effectuate such proposals dependent upon congressional action. The basic scheme of the act's operative provisions is contained in four key elements:

1. All budget authority to be withheld by the executive branch from obligation or expenditure--either permanently or temporarily--must be reported to the Congress.

2. Proposed rescissions--budget authority intended for permanent withdrawal--must be released for obligation and expenditure if the Congress fails within 45 days to pass legislation authorizing the withdrawal.

3. Deferrals--budget authority intended for temporary withdrawal within a fiscal year--may be withheld as proposed if the Congress fails to act; either House may require release of such deferred budget authority by passing a simple resolution to that effect.

4. The Comptroller General of the United States is empowered to seek court enforcement of any required release of budget authority.

The act thus achieved a delicate balance between executive branch prerogatives and legislative branch control. Where full legislative enactment was necessary--to rescind existing statutory budget authority--Congress was not compelled to take any action to force the release of impounded funds. And if funds were being impounded only temporarily, a simple one-House measure was sufficient to force the immediate release of funds.

The system has worked reasonably well until relatively recently. In 1983, the Supreme Court decided Immigration and

Naturalization Service v. Chadha casting doubt on the constitutional validity of the one-House veto provisions applicable to deferrals of budget authority under the act. The congressional response to Chadha has been to disapprove deferrals by enactment of law rather than to rely upon the act's constitutionally suspect one-House veto provisions. This response together with the administration's desire to eliminate many government activities has led to significant erosion of the balance achieved by the Impoundment Control Act, an erosion heavily in favor of executive branch prerogative at great cost in control by the legislative branch.

Under the act, GAO reviews the President's special messages to the Congress containing proposed impoundments. We verify the facts and review the legal implications underlying each impoundment, incorporating our comments in a report to the Congress. We report any impoundments which the President has failed to report and we reclassify any impoundment misclassified by the President, i.e., where he has reported a proposed deferral that should have been reported as a rescission or vice versa.

When deferrals are disapproved or the 45-day withholding period for proposed rescissions expires without congressional approval, we monitor Executive action to assure that budget authority is made available for obligation as required. Also, when deferred budget authority is due to expire, typically near the end of a fiscal year, we see to it that the funds are released

in time to be prudently obligated and report the impoundment involved as a rescission if the funds are not timely released.

The dollar amount of deferrals submitted this year is large but not unprecedented. Many deferrals now, as in the past, are routine and noncontroversial. Nevertheless, with the one-House veto supplanted by the practice of passing laws to overturn deferrals, the carefully crafted balance struck by the Impoundment Control Act is no longer in place. Because of the Chadha decision, the Congress no longer is assured that enactment of a one-House resolution of disapproval will suffice to overturn deferrals with relative ease. This has allowed the Executive to institute policy-related deferrals having severe program effects as a result of delays in funding, with little concern that the deferrals will be disapproved. With regard to "no year" funds the Executive is virtually free to defer repeatedly from year to year.

The executive branch is now reimpounding funds even after disapproval by law in situations where that practice is clearly not permissible. Specifically the President without new justification has proposed three reimpoundments, all of which had been previously disapproved by statute. These three reimpoundments are without legal authority, and we have notified the Congress of our intention to file suit to compel release of the Strategic Petroleum Reserve, Housing and Maritime Administration funds involved.

In response to congressional concerns, we have re-examined the issue of whether impoundments associated with requests to

transfer budget authority may properly be classified as deferrals. Deferrals pending transfer have become a source of frustration for the Congress. Where formerly one House could quickly disapprove such deferrals themselves, the Executive is now free, absent a full statutory disapproval, to continue them until the transfer proposals are rejected unequivocally. We remain of the view that we cannot properly conclude that all deferrals pending transfer should be reclassified as rescissions.

How to redress the Impoundment Control Act balance which has been lost is an important question for the Congress to address. The means for doing so are varied, running the gamut from operating under the express terms of the act without regard to the Chadha decision through various legislative solutions, such as treating all impoundments as rescissions or requiring congressional approval before impoundments may be initiated, to prohibiting impoundments entirely. Some approaches are more severe than others and it may be difficult to reach a satisfactory resolution. But it is clear that so long as the current climate continues, the level of congressional frustration will remain high.

This concludes my prepared statement. I would be pleased to answer any questions.